BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ROBERT K. SCHEIDT	)	
Claimant	)	
	)	
VS.	)	
	)	
TEAKWOOD CABINET & FIXTURE, INC.	)	
Respondent	)	Docket No. 1,021,836
	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Claimant appealed the preliminary hearing Order dated May 10, 2005, entered by Administrative Law Judge (ALJ) Thomas Klein.

ISSUES

The ALJ denied claimant's request for medical treatment, finding respondent and its insurance carrier not liable for additional treatment because claimant suffered an intervening accident and injury.

> Claimant probably did aggravate this condition through March 1, 2005, but I believe he continues to aggravate his condition by his subsequent activities. I therefore deny Claimant's request for benefits.[1]

Counsel for respondent and Liberty Mutual Insurance Company (Liberty) contends that claimant's current need for medical treatment is either the result of his prior work-related injury, which occurred in 2001, or the result of his employment after he left work for respondent. In the alternative, if claimant's need for medical treatment is the result of claimant's work for respondent, then respondent, but not Liberty, would be liable for claimant's benefits.

---

[1] ALJ Order (May 10, 2005) at 2.

> [If] the Board finds that the claimant is entitled to medical treatment as a result of his job tasks for the Respondent up to the last day worked, March 1, 2005, the Board should find that the Respondent is solely responsible for providing this treatment as they were uninsured on the last date of exposure to the repetitive tasks.[2]

The issue for Appeals Board (Board) review is whether claimant's present need for medical treatment is a direct and natural consequence of a series of accidental injuries that arose out of and in the course of his employment with respondent.[3]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds the ALJ's preliminary hearing Order should be reversed.

Claimant was employed by respondent from January 1985 until March 1, 2005, when the respondent's business closed. Thereafter, on March 7, 2005, claimant went to work at Boone's Cabinets as a cabinet builder. In addition, claimant continued to operate a lawn mowing business, which he had been doing for approximately four years.

Claimant's job with the respondent was a working shop foreman. His duties included performing supervisory duties as well as helping out with the production. This involved building and installing cabinets, sanding, and moving cabinets.

Claimant had a prior workers compensation claim against respondent, which was settled on November 5, 2002, for a 22.5 percent whole body disability on a running award for injuries to his bilateral hands, wrists, elbows and shoulders. Dr. Pedro Murati's medical report of May 23, 2002, refers to a date of accident on this previous claim as March 2001 and each and every working day thereafter. Dr. Murati gave claimant a 25 percent whole person impairment based on the AMA *Guides*[4]. Dr. Murati released claimant to return to work with the following restrictions: No climbing ladders; no crawling; frequent repetitive hand controls; occasional repetitive grasping and grabbing; rarely heavy grasping; no above shoulder work; no lifting, carrying, pushing, pulling over 50 pounds occasionally or

---

[2]Respondent and Insurance Carrier's Appellate Brief and Reply to Claimant's Brief (filed June 29, 2005) at 7. The Board notes that this brief is signed by counsel as "Attorneys for Respondent" and that there has been no separate entry of appearance by counsel representing respondent for the period respondent was uninsured.

[3]Claimant's Form K-WCE-1 Application for Hearing, filed March 22, 2005, alleges a series of accidents from "11-6-02 through 03-01-05" whereby his "[r]epetitive use of hands, arms, shoulders and neck" caused injury to his "[b]ilateral hands, arms and neck."

[4]American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

35 pounds frequently; no work more than 24 inches from the body; no use of hooks or knives and no use of vibratory tools. Claimant routinely exceeded these restrictions during his subsequent work for respondent.

According to the record in this case, claimant has also filed an application for post-award medical benefits seeking medical treatment under the prior claim. Unfortunately, that application was not consolidated with this proceeding, and its disposition is not known.[5]

Claimant's job duties at Boone's Cabinets includes building cabinets. However, claimant testified that in his position at Boone's Cabinets he no longer carries big sheets of wood, and assembles smaller pieces of wood. The owner of Boone's Cabinets works with him to keep his pain down and allows him to leave work or stop and rest when he is bothered by pain. Claimant stated that his pain has actually decreased at his new job because he is no longer lifting heavy particle boards.

In testifying concerning his lawn mowing business, claimant stated that his brother, who is a co-owner of the business, does the major part of the work. Claimant is mostly involved in the financial part of the business. He testified that he mows only about once a week, and the mowing does not cause him arm pain because his arms are resting on an armrest. He stated that if his shoulders start bothering him, his brother takes over mowing. He also stated that the commercial grade mowers and weed eaters do not vibrate as much as residential mowers and weed eaters do.

Claimant was re-evaluated by Dr. Murati on April 15, 2005. Dr. Murati stated that claimant has worsening bilateral carpal tunnel syndrome and bilateral ulnar nerve entrapment, myofascial pain syndrome of the neck, thoracic and both shoulder girdles, shoulder pain with crepitus, and bilateral rotator cuff sprains versus tears. He recommended physical therapy and anti-inflammatory and pain medication. He also stated that claimant's current diagnoses are within all reasonable medical probability aggravations of preexisting problems from the work-related injury occurring on November 6, 2002, through March 1, 2005. The neck and thoracic complaints are new. Dr. Murati kept claimant's prior restrictions but modified them by indicating no heavy grasping, no lifting, carrying, pushing or pulling more than 35 pounds occasionally and 20 pounds frequently; avoid awkward positions of the neck; no keyboarding and avoid twisting of his trunk.

Dr. Murati's opinion relating claimant's present complaints to his work with respondent is not contradicted by any other medical opinion testimony. Respondent, however, argues that Dr. Murati's opinion is flawed because he had an inaccurate and incomplete history concerning the extent of claimant's lawn mowing activities and his job

[5] An Order by the ALJ consolidating the post-award proceedings in the prior claim with this claim would appear appropriate.

duties with the subsequent employer, Boone's Cabinets. Dr. Murati's report reflects that although he was aware that claimant had a lawn mowing business, Dr. Murati believed that claimant had employees doing the physical labor. In addition, there is no mention in Dr. Murati's report of the fact that claimant is working for another cabinet manufacturing company. Respondent contends that claimant is violating the work restrictions placed on him by Dr. Murati in both of these subsequent employments and thereby causing an aggravation to his condition, resulting in the need for medical treatment.[6]

Claimant denies a subsequent worsening or aggravation of his condition and further points out that claimant made a demand for medical treatment to respondent by certified mail dated March 9, 2005. Nevertheless, respondent and its insurance carrier failed to either provide claimant with medical treatment or obtain an independent evaluation of claimant's condition. Claimant argues that respondent should not be rewarded for its refusal to provide claimant with medical treatment.

> The claimant also suggests that to deny compensation on the basis that work activities at a subsequent employer have also contributed to a claimant's injury encourages respondents, such as occurred here, to deny the claimant medical benefits and deny the claimant the payment of temporary total disability. Accordingly, a claimant is forced to return to work pending a Preliminary Hearing. Then, when the claimant finally obtains a hearing, the respondent defends on the basis that by finding another job the claimant has disqualified himself from medical benefits and temporary total benefits for the injury which clearly occurred, in this case an aggravation of a pre-existing condition, at the respondent's place of business. As a matter of policy, this approach encourages employers to disregard their obligations under the Workers' Compensation Act and unjustifiably deny the claimant medical benefits and the payment of temporary total disability compensation. Here, if the respondent had complied with its duties under the law and provided the claimant with immediate medical treatment for his injury, the claimant would have been evaluated and been in treatment prior to commencing any additional employment. Instead, the respondent denied the claimant medical benefits and refused to pay temporary total disability compensation thereby forcing the claimant to find other employment pending the court's order concerning the payment of such benefits.
>
> To permit the respondent to deny medical benefits, temporary total disability compensation, or even an evaluation by a physician, and then subsequently defend the claim on the basis that the claimant was forced to return to other employment outside his restrictions, only encourages employers such as this respondent to violate the law. Further, this approach sends a strong message to claimants discouraging them from finding accommodated employment. Instead, they should remain home and wait for a preliminary hearing, since to do otherwise endangers their right to medical treatment and temporary total disability compensation since

[6]Respondent's brief (filed June 29, 2005) at 5.

> a respondent may successfully defend the claim by alleging accommodated work also aggravated the claimant's injury and therefore disqualifies him from benefits.[7]

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.[8] The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.[9] An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.[10] When a primary injury is shown to arise out of and in the course of employment, every natural consequence flowing from that injury, including new and distinct injuries, are compensable so long as they are the direct and natural consequence of the primary injury.[11]

The record contains no explanation for why claimant's initial request for medical treatment was denied. It seems unlikely that the defense of a subsequent accident was the reason, as at the time claimant first requested medical treatment from respondent, he had just begun working for Boone's Cabinet. The more likely explanation is that there was a question about the appropriate date of accident and the insurance coverage had changed or ended. But whether or not claimant's need for treatment was a direct result of the original series of work-related accidents with respondent or the result of a new series of accidents, and if a new series of accidents, then the appropriate ending date for that series, are not issues that go to the compensability of the claim.

The Board was presented with a similar issue in the case of *Ireland,*[12] where, in holding that the Board was without jurisdiction to consider the issue of which insurance carrier should pay for the preliminary hearing benefits, we said:

> Furthermore, it is inconsistent with the intent of the Workers Compensation Act for a respondent to delay preliminary hearing benefits to an injured employee while its insurance carriers litigate their respective liability. The employee is not concerned with questions concerning this responsibility for payment once the respondent's

---

[7] Claimant's Brief on Appeal (filed June 17, 2005) at 6-7.

[8] *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

[9] *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 514, 949 P.2d 1149 (1997).

[10] *Nance v. Harvey County*, 263 Kan. 542, 549-50, 952 P.2d 411 (1997); *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

[11] *Jackson v. Stevens Well Service*, 208 Kan. 637, 643, 493 P.2d 264 (1972).

[12] *Ireland v. Ireland Court Reporting*, WCAB Docket Nos. 176,441 & 234,974, 1999 WL 123220 (Kan. WCAB Feb. 22, 1999).

general liability under the Act has been acknowledged or established. *Kuhn v. Grant County*, 201 Kan. 163, 439 P.2d 155 (1968); *Hobelman v. Krebs Construction Co.*, 188 Kan. 825, 366 P.2d 270 (1961).

Based on the record presented to date, the Board finds claimant's symptoms worsened while performing his work for respondent and that claimant's worsening is not a direct and natural consequence of his prior work-related injury. The evidence indicates that his subsequent work activities for respondent made his condition permanently worse or aggravated his preexisting condition beyond what resulted from the prior series of accidents. The Board finds that claimant did not sustain an intervening accident or injury. Accordingly, respondent shall provide claimant with a list of three names from which claimant shall select one to be his authorized treating physician.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.[13]

WHEREFORE, the Board reverses the Order of Administrative Law Judge Thomas Klein dated May 10, 2005, and remands this matter to the ALJ for such further orders, consistent herewith, as may be necessary on claimant's request for preliminary benefits.

IT IS SO ORDERED.

Dated this _____ day of August 2005.

_____
BOARD MEMBER

c: John L. Carmichael, Attorney for Claimant
Samantha N. Benjamin, Attorney for Respondent and its Insurance Carrier, Liberty Mutual Insurance Company
Teakwood Cabinet & Fixture, Inc., uninsured respondent, in care of Michael Ermey, President, 545 Circle Drive, Wichita, Kansas, 67211
Thomas Klein, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[13]K.S.A. 44-534a(a)(2).